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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,175	09/20/2001	Daniel E. E. Hayes JR.	HAYES-5	4587
7590 01/27/2004				
Pandiscio & Pandiscio 470 Totten Pond Road Waltham, MA 02451-1914				
			EXAMINER PRIDDY, MICHAEL B	
			ART UNIT 3732	PAPER NUMBER 9
DATE MAILED: 01/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,175

Applicant(s)

HAYES ET AL.

Examiner

Michael B Priddy

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 9-12 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 9-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Powell (US 5,906,644) with reference to Exhibit A. Powell teaches a modular prosthesis 10 comprising a body element 24 and at least one other element 20, wherein said body element 24 and said at least one other element 20 are joined together by at least one modular connection 18/22; and further wherein said body element 24, as shown in Fig. 11, has a generally trapezoidal configuration and comprises an anterior wall AW and a posterior wall PW, at least one of said anterior wall AW and said posterior wall PW converging toward the other on the medial side of said body element 24 and diverging away from the other on the lateral side of said body element 24, whereby the body element 24 approximates a general wedge shape; wherein said body element 24 further comprises a lateral aspect LA and a medial aspect MA extending between said anterior wall AW and said posterior wall PW; and wherein the vertices V of said body element 24 have a rounded configuration. Tapered post 23 is provided "for attachment of a conventional ball" (lines 17-18 of column 6).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powell in view of Khalili et al. (US 6,187,050). As set forth in the above rejection under 35 U.S.C. 102(e), Powell teaches all of the limitations of the present invention except a prosthetic acetabular cup component.

Khalili et al. teach an oblong acetabular cup 10 intended to be "implanted in the acetabular cavity in the pelvis to replace the natural acetabulum. Replacement of the acetabulum is necessary when there is an inadequate articulation surface for a head of ball of a prosthetic femoral component." (lines 28-30 of column 1) It would have been obvious to one of skill in the art at the time of the present invention to provide an acetabular cup component with the modular prosthesis of Powell so that there would be an adequate articulation surface for a ball component received on the tapered connector 44 of neck 22.

Response to Arguments

Applicant's arguments with respect to claims 9-12 and 14-16 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 17 is allowed.

Claim 9 was previously indicated as containing allowable subject matter however, upon further review, the Examiner believes the Powell reference teaches the limitations of claim 9. The Examiner sincerely regrets any inconvenience to Applicant of Applicant's representative.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael B. Priddy

Michael B. Priddy
January 20, 2004

